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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: 202-828-2236
A5691.524

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Federal Communications Commission
Office of Secretary

March 27, 1997

BY COURIER

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

EX PARTE PRESENTATION

Re: **Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Mr. Caton:

The attached ex parte letter is submitted for inclusion in the record of this proceeding.

Respectfully submitted,

Robert F. Aldrich

Robert F. Aldrich

RFA/nw
Attachment

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598 Madison Avenue • New York, New York 10022-1614
Tel (212) 832-1900 • Fax (212) 832-0341
http://www.dsmo.com

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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
2101 L Street NW • Washington, DC 20037-1526
Tel (202) 785-9700 • Fax (202) 887-0689
Writer's Direct Dial: 202-828-2226
A5691.524

March 27, 1997

Mary Beth Richards
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, DC 20554

EX PARTE
PRESENTATION

Re: **Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128**

Dear Mary Beth:

On behalf of the American Public Communications Council ("APCC"), we are responding to Michael Kellogg's March 19, 1997 ex parte letter ("RBOC Letter") on behalf of the RBOC Coalition, concerning the payphone-related services that the Payphone Orders[1] require to be federally tariffed by local exchange carriers ("LECs").[2]

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[1] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Notice of Proposed Rulemaking, 11 FCC Rcd 6716 (1996), Report and Order, FCC 96-388, released September 20, 1996 ("Payphone Order"), Order on Reconsideration, FCC 96-439, released November 8, 1996 ("Reconsideration Order").

[2] While this letter and the RBOC Letter address the issue of federal tariffing, the Commission should not lose sight of the fact that the Bell Operating Companies ("BOCs") have failed to comply with an even more fundamental requirement of the Payphone Orders -- the requirement to tariff all their services to PSPs, including state-tariffed "basic payphone line" services such as "COCOT" service, at cost-based rates that satisfy the new services test. That failure requires that the BOCs be declared ineligible for payphone compensation, as requested in APCC's March 26 Motion for a Ruling on the Bell Companies' Compliance with the Payphone Orders.

The RBOC Coalition's position is that the federal tariffing requirement of the Payphone Orders applies only to (1) network features and functions that are (2) payphone-specific and (3) used by the LEC payphone service provider ("PSP") itself in providing payphone service. RBOC Letter at 1-3. APCC agrees with the first limit. We agree with the second to the extent that services that do not have a specific application to payphones need not be federally tariffed.[3]

The third asserted limitation is that LECs are only required to federally tariff services that are actually used by their own payphone units. Assuming that such a limitation applies, it does not excuse the LECs from federally tariffing features and functions that they use and that are otherwise "unbundled," merely because the LEC chooses to structure its offering to its own payphone service operation as a bundled package.

As discussed in APCC's comments on the Bell Operating Companies' ("BOCs'") CEI plans, the BOCs have typically structured their "coin line" offerings, which will be subscribed to primarily by their own payphone units, as a bundled offering that includes (1) the local exchange line and network usage, (2) blocking and screening services, (3) answer supervision, and (4) coin service functions (i.e., coin supervision, coin counting and call rating). See, e.g., Ameritech Letter at 3 ("IDDD Blocking, Answer Supervision and Call Screening are included in Coin Line service"). The decision to bundle this offering is at a minimum counterintuitive, given that items 1, 2, and 3 are already available to PSPs, generally on an unbundled basis, as "COCOT" service and its associated unbundled features and functions.[4] The BOCs should not be permitted to use the artifice of bundling into one service the entire package of services they offer to themselves -- even though equivalent functions are available on an unbundled basis to independent PSPs -- as a way of evading the requirement to federally tariff the services they use.

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[3] However, the fact that a feature or function (such as call screening or answer supervision) that is especially useful to PSPs may also be available to other classes of customers should not prevent it from being federally tariffed. The RBOC Coalition appears to be in substantive agreement with APCC on this point, since they acknowledge that both call screening and answer supervision are "payphone-specific" features and functions. RBOC Letter at 2.

[4] COCOT service (also known as COPT, PAL, IPP line etc.) is essentially a bare business line. Although there are a few jurisdictions (such as California) where blocking and screening are bundled with COCOT service, in the majority of cases blocking and screening options are separately priced add-ons. Answer supervision, which is now available from most BOCs, is also an unbundled add-on to COCOT service.

The RBOC Letter's mantra-like repetition of quotations from the Payphone Orders should not distract from the fundamental point. The federal tariffing requirement was adopted because the Commission is under a mandate to eliminate discriminatory LEC practices favoring their own payphone operations. 47 U.S.C. § 276(a)(2). Implementing this mandate is ultimately a federal responsibility -- it cannot simply be handed off to state regulators.[5]

In order to implement this statutory mandate, the Commission specifically addressed in two paragraphs of the Reconsideration Order the question of which services to PSPs should be tariffed in the federal and state jurisdictions. In resolving this issue the Commission distinguished between two types of components of payphone service. The "basic payphone line for smart and dumb payphones" would be tariffed only in the state jurisdiction. The network features and functions used by the LEC's payphone unit would be tariffed in the federal and state jurisdictions. Reconsideration Order, ¶¶ 162-63.

In framing these requirements, the Commission clearly intended the "basic payphone line" to serve as a building block to which additional features and functions would be added as options. Coin service features, answer supervision, and blocking and screening are all options that can be, but need not be, added by a PSP to the basic payphone line. Thus, each of these services is an "unbundled feature or function" and each must be federally tariffed if the function is actually used by the LEC -- whether in "bundled" or "unbundled" form -- to provide payphone service. The LEC payphone units will, of course, as described above, use these functions as part of their bundled coin line offering.

The RBOC Letter's references to "problems of mix-and-match and rate arbitrage" should not deter the Commission from enforcing the federal tariffing requirement. RBOC Letter at 4. However significant they may have been in other proceedings, those issues are immaterial here. In this proceeding, the Commission has required that rates for both state and federal services be cost-based in accordance with the new services test. Reconsideration Order, ¶ 163. The Commission does not recognize any legitimate interest of the states in pricing payphone services in excess of that standard. Indeed, in this proceeding, the purpose of the federal tariffing requirement is "to directly ensure that payphone services comply with Section 276," even if state commissions are unable to do so. Reconsideration Order, ¶ 162. Therefore, to the extent that a PSP chooses a cost-based federally tariffed rate for a payphone service, in preference to a non-cost-based state tariffed rate, that is exactly the result that is intended by the Payphone Orders.

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5 Indeed, the Commission is specifically required to preempt any state regulation that is inconsistent with its own payphone regulations. 47 U.S.C. § 276(c).

requirement applicable to these features was clearly stated in the payphone order and should not be waived "in this 11th hour" in order to accommodate BOCs that failed to heed it.

Sincerely,

Albert Kramer by RYA

Albert H. Kramer

AHK/nw

cc: Tom Boasberg
Jim Coltharp
Dan Gonzalez
Jim Casserly
A. Richard Metzger
Regina Keeney
Richard Welch
Rose M. Crellin
Ann Stevens
Blaise Scinto
Linda Kinney
Craig Brown
Christopher Heimann
Michelle Carey
Michael Pryor
Michael Carowitz
Dan Abeyta
Carol Mattey
Judy Nitsche
John B. Muleta
Radhika Karmarkar
Brent Olson

Federal tariffing of answer supervision and call screening is no idle exercise. Call screening, a feature that independent PSPs generally view as an essential protection against fraud, is frequently priced in state tariffs at $4.00 or $5.00 per line per line per month, even though recent federal tariff filings by U S West and Southwestern Bell indicate that the recurring cost is pennies per line per month. See U S West Communications, Transmittal No. 823, filed January 15, 1997, Workpaper 13; Southwestern Bell Telephone Co., Transmittal No. 2608, filed January 15, 1997, Exhibit A. Answer supervision, a feature that can significantly improve the quality of payphone service and reduce customer complaints, is generally priced in state tariffs at rates that are at least several times cost.

Coin Service Features

The RBOC Letter does not even mention the possibility of federally tariffing coin service features (i.e., coin supervision, coin counting and call rating), even though these features are clearly within the three limitations advocated by the RBOC Letter -- they are "network" features, "payphone-specific," and used by the LEC's own PSP -- and even though some or all these features have been federally tariffed by numerous independent LECs in response to the Payphone Orders.

Presumably, the RBOC Coalition adheres to the view, expressed in various members' CEI replies, that coin service features are not "unbundled features or functions" because the RBOCs have chosen to include these features in a bundled "coin line" offering. The Commission should not countenance the use of this artifice to evade the federal tariffing requirement.

Coin service features are appropriately defined as "unbundled features or functions" for purposes of the federal tariffing requirement. As discussed above, the Reconsideration Order drew a fundamental distinction between the "basic payphone line," which must be tariffed in the state jurisdiction only, and "unbundled features" used by the LEC's own payphone operations, which must be tariffed in the federal and state jurisdictions. Coin service features are not inherently part of the "basic payphone line." Rather, they are added functions that enhance the network functionality available to the PSP. Since a "basic payphone line" may be purchased without coin service features,[8] the coin service features are properly defined as "unbundled features or functions."

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[8] "COCOT" service is essentially a "basic payphone line." The various features available with "COCOT" service are unbundled add-ons. Coin service features should also be treated as unbundled add-ons.

Allowing the BOCs to bundle coin service features with the basic payphone line, without separately tariffing those features in the federal jurisdiction, leads to numerous consequences that are against the public interest. First, the bundled coin line offering enables the BOCs to evade effective tariff review to ensure that the "basic payphone line" is priced at a "cost-based" rate (Reconsideration Order, para. 163) -- a fundamental condition for the success of the Commission's payphone competition and local call rate deregulation policies. Second, the bundled coin line offering allows inconsistent pricing of service offerings for "dumb" and "smart" payphones, which in some states has resulted in the bundled "coin line" being priced lower than the sum of unbundled "COCOT" line offerings that provide less network functionality. Third, the bundled coin line offering allows the BOCs to structure the "coin line" as a flat-rate service while maintaining usage-sensitive pricing of the "COCOT" line -- a fundamentally discriminatory result that artificially advantages the BOCs in competing to serve attractive higher volume locations. These negative public policy consequences are discussed in detail in APCC's March 26 Motion for a Ruling on the Bell Companies' Compliance with the Payphone Orders.

Federal Tariffing Requirements Should Not Be Waived Or Deferred

The RBOC Letter proposes that the Commission "approve the CEI plans as they are today and then conduct a proceeding to determine whether or not federal tariffs should be required" for network-based payphone services that are not used by the LEC's payphone unit. APCC has no objection to conducting a proceeding to determine whether to impose such additional obligations. However, the Commission must not approve the CEI plans before ensuring that the BOCs have federally tariffed all the network-based functions that their payphone units are, or will be using after CEI plan approval -- including call screening, answer supervision, and coin service features. The federal tariffing requirement applicable to these features was clearly stated in the payphone order and should not be waived "in this 11th hour" in order to accommodate BOCs that failed to heed it.

Sincerely,

Albert Kramer by RTA

Albert H. Kramer

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Blaise Scinto
Linda Kinney
Craig Brown
Christopher Heimann
Michelle Carey
Michael Pryor
Michael Carowitz
Dan Abeyta
Carol Mattey
Judy Nitsche
John B. Muleta
Radhika Karmarkar
Brent Olson